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# Suits Against Licensed Foreign Corporations

## Federal Courts

In *Neirbo Co. et al. v. Bethlehem Shipbuilding Corp.*, 60 S. Ct. 153, 308 U. S. 165, the Supreme Court of the United States held, in 1939, in a suit in a federal court based upon diversity of citizenship, that a foreign corporation's appointment of an agent for service of process in conformity with the laws of New York effected a consent to be sued in the federal as well as the State courts of New York.

Among the recent cases in which this decision was discussed is *Gulf Oil Corporation v. Gilbert*, 67 S. Ct. 838, where the Supreme Court of the United States observed on March 10, 1947:

> "The *Neirbo* case is only a declaration that if the defendant by filing consent to be sued, waives its privilege to be sued at its place of residence, it may be sued in the federal courts at the place where it has consented to be sued. But the general venue statute plus the *Neirbo* interpretation do not add up to a declaration that the court must respect the choice of the plaintiff, no matter what the type of suit or issues involved. The two taken together mean only that the defendant may consent to be sued, and it is proper for the federal court to take jurisdiction, not that the plaintiff's choice cannot be questioned. The defendant's consent to be sued extends only to give the court jurisdiction of the person; it assumes that the court, having the parties before it, will apply all the applicable law, including, in those cases where it is appropriate, its discretionary judgment as to whether the suit should be entertained. In all cases in which the doctrine of *forum non conveniens* comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them."

In that case, an individual plaintiff, a resident of Virginia, where his cause of action arose, instituted suit in a New York federal district court against a Pennsylvania company, qualified to do business in both Virginia and New York. The Supreme Court of the United States ruled that this federal court did not exceed its powers or the bounds of its discretion in dismissing plaintiff's complaint and remitting him to the courts of his own community. In another decision, rendered the same day, the Supreme Court found reason to affirm the judgment of another federal court in New York in its view that a case should not be tried in New York as there was ample remedy available in state and federal courts in Illinois, under circumstances where plaintiff, a resident of New York, brought

a derivative suit as a policyholder against an Illinois corporation, qualified in New York, among other defendants, on transactions which took place in Illinois, and where plaintiff demanded trial in New York as a matter of right and of law. (*Koster v. Lumbermens Mutual Casualty Co.*, 67 S. Ct. 828.)

In a more recent case, *Shaefer et al. v. Oliver Corporation,* (see page 52), the United States District Court for the North District of Indiana, South Bend Division, has dismissed a suit, as to individual Illinois and Iowa plaintiffs, on grounds that claims, as to them, arose out of Indiana and that the doctrine of *forum non conveniens* applied, citing the *Koster* and *Gulf Oil Corporation* decisions of the Supreme Court of the United States, mentioned above. The principles laid down in these decisions are now being applied by lower courts, as evidenced by the Indiana *Shaefer* case, through the exercise of discretion not previously supposed to inhere in these federal courts. As was said by Justice Black in his dissenting opinion in the *Gulf Oil Corporation* case:

> "No discretionary authority of any kind to decline to decide a case, however, has before today, been vested in federal courts in actions for money judgments deriving from statutes or the common law. To engraft the doctrine of *forum non conveniens* upon the statutes fixing jurisdiction and proper venue in the district courts in such actions, seems to me to be far more than the mere filling in of the interstices of those statutes."

## Domestic Corporations

**New York.**

**Removal of directors, in accordance with by-law provision, upheld.** Petitioner, a shareholder and director, sought an order setting aside a meeting of the stockholders of his corporation at which directors were removed and new directors elected. There was no question that timely and proper notice of meeting was given. The notice was for a special meeting of stockholders "(1) to remove all of the directors, or persons claiming or pretending to be directors of the corporation" and "(2) to fill vacancies in the board of directors by electing a new board of directors." The by-laws, as in effect when petitioner was elected a director, provided: "Removal of Directors. Any director may be removed at any time, without cause or charges, at a meeting called for that purpose by a plurality vote of the class of stockholders which elected him." Petitioner contended that in the absence of statute or provision in the certificate of incorporation, authorizing the removal or suspension of a director, a director cannot, without cause, be removed or suspended from office until the end of the term for which he was elected. Since no claim was made that the directors were removed for cause, it was urged that their removal was unauthorized and illegal. "The question posed,"

remarked the Supreme Court, Special Term, New York County, "is whether the by-laws of a corporation, which provide for the election of directors and their tenure, may legally provide for their removal, without cause, by the stockholders." The court, after an examination of cases in which it had been held that such by-laws were valid and authorized stockholders to remove directors, concluded that the by-law under consideration authorizing the removal of directors was valid, and that the meeting in question was properly called and that the action taken was legal. *Petition of Singer*, 70 N. Y. S. 2d 550. Katz & Sommerich (Donald I. Peyser and Benjamin Busch, of counsel), of New York City, for petitioner. Pomerantz, Levy, Schreiber & Haudek (Abraham L. Pomerantz, of counsel), of New York City, for respondent.

**Common stockholder ruled entitled to appraisal of stock under statute where charter amendment gave voting rights to holders of previously authorized preferred stock which were equal, share for share, to those voting rights to which the common stockholders had been entitled.** Appellant was a registered holder of 50 shares of the common stock of respondent company. As such, she received in September, 1945, notice from respondent that at the forthcoming annual meeting a proposal would be acted upon that its certificate of incorporation be so amended as to add to the rights of preferred stockholders voting rights, equal share for share, to those to which the holders of the common stock were entitled. Prior to this annual meeting, appellant sent to respondent by registered mail a written notice objecting to the proposed amendment and demanded payment for the common stock then owned by her. Subsequently, at the annual meeting, she voted against the amendment. Thereafter, as a nonconsenting common stockholder, she instituted this proceeding to determine the value of her stock as a basis for the payment therefor under Stock Corporation Law, Consol. Laws, c. 59, secs. 21, 38, subd. 9, par. (d). The Court of Appeals of New York ruled in favor of appellant common stockholder, finding that the statute cited extended to a situation where a charter amendment granted new voting rights—equal to those of the common shares—to previously authorized preferred stock then outstanding. *Marcus v. R. H. Macy & Co., Inc.*, 297 N. Y. 38, 74 N. E. 2d 228. William Rosenfeld of New York City, for appellant. Leon Lauterstein, Melbourne Bergerman and George Siegel of New York City, for respondent.

**Appointment of appraisers under Sec. 21, S. C. L., denied, where action approving certificate of classification involving abolition of preemptive rights was later rescinded and certificate was never filed.** In a proceeding where a stockholder moved for the appointment of appraisers to appraise her stock under Section 21, Stock Corporation Law, petitioner had been represented by proxy at a meeting held for the purpose of acting upon a proposal to increase the capital stock and to pass upon a proposed certificate of classification of shares which, among other things, abolished the preemptive rights of the stockholders. Petitioner's stock was voted against the entire pro-

posal and objected to it, but there was no specific objection to the provision abolishing preemptive rights, nor was a demand made at that time for an appraisal. The proposal was adopted but the certificate of classification was never filed. Shortly afterward petitioner caused an objection to the action taken to be served on the company and made a demand for the payment of her stock pursuant to Section 38 of the Stock Corporation Law. After the notice for this motion for the appointment of appraisers was served, a corporate meeting was held at which the action taken at the meeting first mentioned was rescinded, petitioner being represented by proxy, but declining to vote at that meeting, another resolution was adopted providing for the same increase of the capital stock, except that it omitted the provision abolishing preemptive rights. The New York Supreme Court, Madison County, observed: "The only question for determination is: Did the right of the petitioner to such an appraisal vest and become absolute immediately upon the adoption of the resolution at the first meeting of stockholders and the service of petitioner's objection thereto and her demand for an appraisal, although the certificate to carry out such resolution was never filed and the resolution itself was rescinded prior to return date of the motion? A fair interpretation of the statute involved and the obvious purposes and objectives of these statutes would seem to require a negative answer." The motion was, therefore, denied. *In re Eaton*, 69 N. Y. S. 2d 846. William D. Kiley of Oneida (MacKenzie, Smith & Michell, by William L. Broad of Syracuse, of counsel), for petitioner. Hancock, Dorr, Ryan & Shove (Benjamin E. Shove and Theodore M. Hancock, of counsel), of Syracuse, for respondent.

**Deceased stockholder's executors ruled to have power, as stockholders, although not of record, to call special meeting of stockholders.** The issue was whether an election of directors was held pursuant to a valid notice to the stockholders. Appellants were executors of an officer and director of the company, who, at the time of his death owned 80% of its authorized and issued capital stock, while petitioner-respondent owned the remaining 20%, being also an officer and director. The corporation's by-laws required that the annual stockholders' meeting be held on September 16, 1946, at which time directors were to be elected. This was two months subsequent to decedent's death. No meeting was, however, called by the surviving officers or directors either for that date or any date thereafter. In such circumstances, on December 10, 1946, the executors served a notice upon the petitioner-respondent of the time and place of a special meeting of the stockholders on December 24, 1946, for the purpose of electing directors and published the notice in a newspaper published in the county where the election was to be held in each of two successive weeks. At the meeting held pursuant to the notice, a board of directors was elected who in turn elected officers of the company. Petitioner contended the executors were not stockholders of record and therefore without power to call the meeting, and that if it were held that they were stockholders, then the elections were a

nullity since they were not held pursuant to proper notice. The Supreme Court, Appellate Division, First Department, found that the meeting had been properly called in accordance with the provisions of Section 22 of the General Corporation Law, governing the mode of calling special elections of directors. It also found that the executors, as stockholders had the power to call the meeting, remarking: "While the executors were not stockholders of record, in the sense that the stock was not registered in their names, they nevertheless were stockholders of the corporation. Upon the death of Ben Schneider, title to and the rights in the stock which he owned passed to his special representatives by operation of law. At the time of their appointment his executors became the owners of the stock and were vested with all rights flowing from such ownership formerly enjoyed by the testator regardless of the fact that the stock remained registered in the name of the decedent." *Petition of Bloch*, 70 N. Y. S. 2d 531. Kotzen, Mann & Siegel (Philip L. Handsman, of counsel; Milton M. Siegel and Abraham Mann, on the brief), of New York City, for appellants. Gustave B. Garfield of New York City, for petitioner-respondent.

**Ohio.**

**Where attempt is made to comply with statute permitting demand for fair cash value of shares, under circumstances where there has been a sale of entire assets, and an agent is employed to make the demand, the agent's authority, in writing, must be established at the time of demand as the act of the stockholder or there is no compliance with the statute.** Plaintiffs below, stockholders in defendant company, sought to recover the fair cash value of their shares after sale by defendant of all or substantially all of its corporate assets without the approval of the plaintiffs. Judgments adverse to plaintiffs had been rendered in the trial court and the Court of Appeals, Hamilton County. Sec. 8623-72, General Code, governing the rights of stockholders to demand the fair cash value of their shares upon such a sale of all or substantially all of a corporation's property, makes no provision for the dissenting shareholder to exercise by agent or proxy the right to object in writing to the sale of the assets of the corporation and to demand in writing the payment of the fair cash value of his shares. Plaintiffs had appointed an Ohio attorney verbally and later in writing to act for them in demanding specified amounts per share for their stock. Such demands having been made by letter by the attorney, who submitted no evidence of his authority to act for plaintiffs, the company refused to pay and made a counter offer. The primary question was whether the action by the attorney had validity under the statute as a step taken by plaintiffs as shareholders. The Supreme Court of Ohio, in ruling that the attorney's acts were ineffective and not in compliance with the statute, concluded: "We hold that Section 8623-72, General Code, requires the dissent and demand to be made in writing and in person by the shareholder or by a proxy appointed by a writing signed by the

shareholder and exhibited to the corporation, as authorized by Section 8623-53, General Code. It necessarily follows that such written authority must be displayed to or filed with the corporation within the time limited. By the failure of the plaintiffs to properly comply with the requirement to demand in writing the payment of the fair cash value of their shares within 20 days from the date on which the sale of the assets of the corporation was authorized by the shareholders, plaintiffs lost their right to proceed to have determined the fair cash value of their shares in accordance with Section 8623-72, General Code, and are relegated to their position as shareholders in defendant corporation." *Klein v. United Theatres Co.*, 74 N. E. 2d 319. Charles P. Taft of Cincinnati, for appellants. Paxton & Seasongood, Robert P. Goldman, Clyde M. Abbott and Martha B. Allen of Cincinnati, for appellee.

## Foreign Corporations

**Alabama.**

**Shipment in interstate commerce to distributor in state ruled not doing business for purpose of service upon selling corporation.** Defendant Maine corporation appeared specially for the purpose of having service of process upon it set aside on the ground that it was not doing business in Alabama at the time of the service. Such service was made upon its president, while visiting Alabama to discuss with officers of its Alabama distributor matters concerning the promotion of sales of defendant's products and policies in connection therewith. He also discussed such matters with agents and prospective agents of the distributor. Defendant had shipped its products to the distributor from Boston, Massachusetts upon receiving the distributor's orders. It had no office, officers, salesman or other employees in Alabama. The Alabama Supreme Court affirmed a judgment in favor of the defendant, regarding the limited activities of the company in the state as not constituting the doing of business so as to confer jurisdiction upon the courts of the state and observing: "Of course, the mere presence of the president of the defendant corporation in this state did not confer upon our courts jurisdiction of the defendant corporation." *Harrub et al. v. Hy-Trous Corporation*,* 31 So. 2d 567. Hugh A. Locke and Wade H. Morton of Birmingham, and G. Q. Milwee and Garnett S. Andrews of Nashville, Tenn., for appellants. Harvey Deramus of Birmingham, and Harris Isaacson of Lewiston, Me., for appellee. Commerce Clearing House Court Decisions Requisition No. 377829.

* The full text of this opinion is printed in the **State Tax Reporter**, Alabama, page 317.

**Arkansas.**

**Unlicensed foreign corporation, whose soliciting agent in state merely secured orders, approved in another state and followed by the**

**shipment of goods into Arkansas in interstate commerce, ruled not "doing business" so as to be subject to service of process in a Federal court.** Defendant Missouri company moved to quash service of process upon it. Defendant's activities with respect to Arkansas were that it had employed plaintiff to act as a soliciting agent in that state and his sole duty was to secure orders and send them to defendant in Missouri. The defendant filled them by shipping the goods direct to the purchasers. It had no wholesalers in Arkansas, maintained no stock of goods there and performed no other acts which the United States District Court, W. D., Arkansas, could find sufficient to support a finding of "doing business" in the state. The court ruled that defendant was not subject to the jurisdiction and granted the motion to quash the service of process. *McWhorter v. Anchor Serum Co.*,* 72 F. Supp. 437. Sampier & Ford of Rogers and David L. Ford of Fort Smith for plaintiff. Brown, Douglas & Brown of St. Joseph, Mo., and Pryor, Pryor & Dobbs of Fort Smith, for defendant.

* The full text of this opinion is printed in the **State Tax Reporter, Arkansas**, page 509.

**Delaware.**

**State Supreme Court grants petition of counsel to appear specially in Superior Court action, begun by foreign attachment against shares owned by defendant there, to test jurisdiction of the Superior Court, where defendant was not licensed in state and had no property or representatives there.** This was an action on contract commenced by the issuance of a writ of foreign attachment by plaintiff, not a resident of Delaware, against defendant Indiana corporation, not licensed in Delaware, which had never transacted any business there and had no officer, director, employee or tangible property in Delaware. From the return to the writ, it appeared that the sheriff had attached certain shares of the stock of another corporation belonging to the defendant. Before the Supreme Court of Delaware was a petition filed by two attorneys-at-law for leave, under special appearance, on behalf of the defendant corporation, to contest the jurisdiction of the Superior Court, where the action was instituted, to enter judgment against the defendant for want of an appearance there and to that end, to file, support and prosecute in the Superior Court, a motion to vacate the judgment entered against the defendant. The State Supreme Court, after an exhaustive consideration of the pleadings in the lower court and the statutes of the Delaware law respecting proceedings by foreign attachment, granted the application of the petitioners for leave, under special appearance, to contest the jurisdiction of the lower court, concluding that "it would be inequitable, in the instant case, to require the defendant to submit itself to personal liability as a prequisite to a hearing on a question concerning the judgment in rem against its property." *Blaustein v. Standard Oil Co. of Indiana*, 54 A. 2d 596. Caleb S. Layton, C. A. Southerland and Aaron Finger of Wilmington, for plaintiff. Hugh M. Morris and Edwin D. Steel, Jr., of Wilmington, for themselves, as petitioners.

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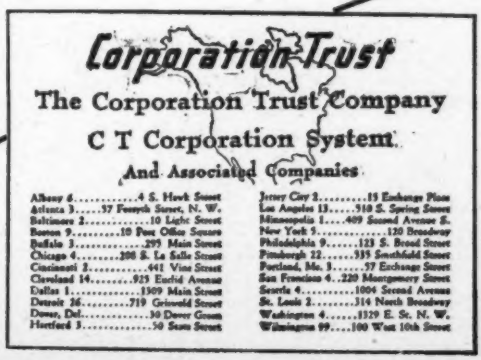

**Indiana.**

**Suit, dismissed as to Illinois and Iowa plaintiffs, where brought in Indiana federal court, on grounds that claims, as to them, arose out of state and that doctrine of *forum non conveniens* applied.** Defendant, a Delaware company, admitted to do business in Indiana, had appointed a resident agent in that state. Suit was brought in the Federal district court in the Northern District of Indiana. Some of the plaintiffs were Illinois and Iowa residents and the claims, as to them, arose out of events and transactions which occurred outside of Indiana. The question was whether such plaintiffs could properly lay venue of their action in the Northern District of Indiana. The United States District Court for that district sustained a motion to dismiss the Illinois and Iowa plaintiffs, upon finding there was no Indiana decision holding that a foreign corporation which had designated an agent for service of process under the Indiana law was amenable to Indiana process in a cause of action arising outside the boundaries of the state, observing: "In the absence of such a decision by a state court, it is the policy of the federal appellate courts to limit the operation of such statutes to causes of action arising within the state." The court also felt the motion to dismiss should be granted on the ground that the action, so far as it concerned these plaintiffs, came "clearly within the doctrine of *forum non conveniens* as laid down in the cases of *Koster v. Lumbermens Mutual Casualty Co.*, 67 S. Ct. 828 (1947), and *Gulf Oil Corporation v. Gilbert*, 67 S. Ct. 838 (1947)." *Shaefer et al. v. Oliver Corporation*,* United States District Court for Northern District of Indiana, South Bend Division, August 4, 1947. Oliver A. Switzer of South Bend, for plaintiffs. Farabaugh, Pettengill, Chaplean & Roper of South Bend and Defrees, Fiske, O'Brien & Thompson of Chicago, for defendant. Commerce Clearing House Court Decisions Requisition No. 378515.

* The full text of this opinion is printed in the **State Tax Reporter**, Indiana, page 308.

**Minnesota.**

**Delaware company, whose charter was declared void for nonpayment of taxes, ruled by Minnesota Supreme Court not to have capacity, incidental to winding-up, to acquire a vendee's interest under a contract for a deed involving title to real estate.** The syllabus by the Supreme Court of Minnesota in an action to determine adverse claims to real estate, involving the question of the capacity of a Delaware corporation, dissolved for nonpayment of franchise taxes, to take or assign an interest in real property in Minnesota, in which it was determined that such capacity did not exist, contains the following statements: "1. The law of the state of incorporation governs as to dissolution of a corporation and its right after dissolution to exercise its corporate functions anywhere. Dissolution of a corporation and deprivation of the right to exercise its corporate powers by the law of the state of incorporation will be effective in another state.

2. Under the statutes of Delaware governing business corporations (Delaware Laws affecting Business Corporations, Annotated (1933) §§ 74, 75, 77 and 40) as construed by the courts of Delaware, the assignment of a contract for deed to a corporation organized for the purpose of buying, selling, and dealing in real estate and interests therein, whose charter has become void and whose powers have become inoperative by reason of nonpayment of taxes, but which continued to exist for three years for purposes of winding up, is void and ineffective, with the consequence that such corporation took nothing under the assignment and could transfer nothing by making an assignment itself of the interest attempted to be assigned to it. 3. Where the facts on their face show an assignment of a contract to a corporation prohibited by law, no presumption will be indulged in favor of the legality of the transaction." *Kratky v. Andrews et al.*, 28 N. W. 2d 624.

**Wisconsin.**

**Contract of foreign corporation, entered into in state at a time when its license stood revoked, ruled not validated by subsequent compliance with licensing statute and therefore not enforceable.** Plaintiff foreign corporation sued to recover a balance claimed to be owing it by defendant under a contract made in Wisconsin for services performed there by plaintiff for defendant. The lower court had granted defendant's motion for summary judgment dismissing the complaint, because plaintiff was not licensed as a foreign corporation under the provisions of Sec. 226.02, Stats., at the time the contract was made and the services were performed. Plaintiff had been duly licensed by the Secretary of State on February 13, 1932. Four days later it had filed with the Secretary of State a revocation of its designation of a statutory agent when becoming licensed. Subsequently, on June 1, 1933, plaintiff's license was forfeited because of its failure to file by that date an annual report. The contract was entered into on February 21, 1945 and the services were performed prior to the taking of steps for recision of the forfeiture by the plaintiff which resulted in its restoration on November 14, 1946. The lower court's judgment dismissing the complaint was affirmed by the Supreme Court of Wisconsin, which regarded plaintiff's violation of the statutes as rendering the contract "absolutely void at and from its inception, so far as the enforcement thereof on behalf of the plaintiff is concerned; and no subsequent ex parte act or proceeding by the Secretary of State for the benefit of the offending corporation and to the disadvantage of the other party can be deemed to validate the contract without the consent of the latter." *MacDonald Bros., Inc. v. Quality Aluminum Casting Co.*,* 27 N. W. 2d 769. Miller, Mack & Fairchild, J. G. Hargrove, Frederic Sammond and Ronald A. Drechsler of Milwaukee, for appellant. Jacobson & Hippenmeyer of Waukesha, for respondent.

* The full text of this opinion is printed in the **State Tax Reporter**, Wisconsin, page 501.

# Taxation

**California.**

**Lumber imported from a foreign country, graded and stacked for sale, from which sales were made prior to the assessment date, ruled not in "original package" and held subject to property taxes.** Respondent company imported lumber from foreign countries which was stored in its yard, awaiting sale. Property taxes were levied against stacks of lumber so received and stored, from which sales had been made prior to the assessment date. These sales were thus from "broken lots," and the question was whether the lumber remaining in the stacks on the assessment date was taxable. The California District Court of Appeal, Second District, discussed the "original package rule" developed under Article 1, Section 10, Clause 2, of the Federal Constitution, forbidding a state to lay imports or duties on imports. The court regarded respondent's activity in grading and stacking the lumber as placing it in the common mass of property in the county prior to the assessment date and viewed the collection of taxes thereon as not constituting a violation of the constitutional restraint. The "original package rule", giving an immunity from taxation to goods imported from a foreign country while still in the original package, was regarded as not reasonably applicable to the lumber after its stacking and grading for sale. A judgment in favor of respondent owner of the lumber was reversed. *E. J. Stanton & Sons v. County of Los Angeles et al.,** 177 P. 2d 804. Harold W. Kennedy, County Counsel, Gordon Boller, Deputy County Counsel, Ray L. Chesebro, City Attorney, and Louis A. Babior, Deputy City Attorney of Los Angeles, for appellant. Stanton & Stanton of Los Angeles, for respondent. (*Petition for writ of certiorari filed in the Supreme Court of the United States, July 16, 1947; Docket No. 213. Certiorari denied October 13, 1947.*)

* The full text of this opinion is printed in the **State Tax Reporter**, California, page 3205.

**Michigan.**

**Basis of privilege or franchise tax, the paid-in capital and surplus as of December 31, ruled not subject to a deduction by reason of renegotiation of government contracts effected in subsequent years.** Plaintiff Michigan corporation sought to recover alleged overpayments of its privilege or franchise taxes for the years 1942 and 1943, by reason of the fact that in the latter part of 1944, as a result of the renegotiation of contracts with the Federal government, plaintiff was required to pay to the government, because of excess profits received in 1942, $98,000 and because of such profits received in 1943, $50,000. Plaintiff claimed its surpluses, as shown by its reports to Michigan for those years, should be reduced in amounts equal to the payments to the Federal government. The Supreme Court of Michigan affirmed a judgment for the defendant, concluding that, as the

reports to the state, on which the fees were based, were required to be made as of December 31 of the respective years, the paid-up capital and surplus by which the tax was measured, was not subject to a deduction which was based on a speculative or contingent liability, observing: "Events occurring after tax liability has been determined in accordance with statute may not, in the absence of legislative authority, affect such liability." "In any event," said the court, "the privilege fees were properly computed on the basis of the capital stock paid in and the actual surplus on the last day of each of the years covered by the reports. Insofar as the computation of said fees is concerned the subsequent payments to the Federal government cannot be given a retroactive effect by way of reduction of the surplus items set forth in the reports. The conclusion necessarily follows that the fees were properly computed and plaintiff paid the amounts actually owing to the State." *Holland Hitch Co. v. State*,* 28 N. W. 2d 242. Charles H. McBride of Holland, for plaintiff-appellant. Eugene F. Black, Attorney General, Edmund E. Shepherd, Solicitor General, of Lansing and Meredith H. Doyle, Asst. Atty. General, for defendant-appellant.

* The full text of this opinion is printed in the **State Tax Reporter**, Michigan, page 802.

**North Carolina.**

**Occupation license taxes on the business of purchasing certain animals for resale, ruled valid.** Plaintiff, a citizen and resident of North Carolina, purchased seventy-eight horses from ranches in Montana, and had them shipped to him at Asheville, North Carolina. He sought to recover license taxes paid under protest to defendant, imposed by G. S. 105-47 upon those "engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules." The Supreme Court of North Carolina, two Justices dissenting in part, affirmed a judgment upholding the tax. The court considered the two taxes levied—one graduated according to the number of carload lots purchased and the other an additional tax of $3 per head on all such animals purchased. It found the method of taxation fair and reasonable and not to discriminate between local and interstate commerce or to place an undue burden on interstate commerce. The dissenting Justices, while taking no exception to the "per carload" tax, regarded the "per head" tax as invalid, as constituting an undue and unlawful burden on interstate commerce. *Nesbitt v. Gill*,* 227 N. C. 174, 41 S. E. 2d 646. Lamar Gudger and Don C. Young of Asheville, for plaintiff. Harry M. McMullan, Attorney General, and Frank P. Spruill and Ralph M. Moody, Assistant Attorneys General, for defendant. *(Appeal filed in the Supreme Court of the United States, June 14, 1947; Docket No. 132. Motion to affirm granted and judgment affirmed, October 13, 1947.)*

* Pertinent portions of this opinion are printed in the **State Tax Reporter**, North Carolina, page 3660.

# Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 213. *E. J. Stanton & Sons v. County of Los Angeles et al.*, 177 P. 2d 804. (The Corporation Journal, December, 1947, page 54.) Property taxes—imports—"original package rule." **Petition for writ of certiorari filed, July 16, 1947. Certiorari denied, October 13, 1947.**

MISSISSIPPI. Docket No. 94. *Stone v. Memphis Natural Gas Co.*, 29 So. 2d 268. (The Corporation Journal, May, 1947, page 329.) State Franchise Tax—unlicensed foreign corporation doing interstate business. **Petition for certiorari filed, May 17, 1947. Certiorari granted June 16, 1947.**

MONTANA. Docket No. 39. *Board of Railroad Commissioners v. Aero Mayflower Transit Co.*, Montana Supreme Court, September 19, 1946. (The Corporation Journal, May, 1947, page 333.) Motor carriers—contract carrier in interstate commerce—imposition of state tax upon carrier. **Appeal filed, February 10, 1947. Jurisdiction noted, March 10, 1947. Argued, October 15, 1947.**

NORTH CAROLINA. Docket No. 132. *Nesbitt v. Gill, Commissioner of Revenue*, 41 S. E. 2d 646. (The Corporation Journal, December, 1947, page 55.) License tax on business of purchasing horses and mules for resale—interstate commerce—validity of tax. **Appeal filed, June 14, 1947. Motion to affirm granted and judgment affirmed, per curiam, October 13, 1947.**

VIRGINIA. Docket No. 339. *The Knott Corporation v. Furman*, 163 F. 2d 199. (The Corporation Journal, November, 1947, page 33.) Service of process—foreign corporation—military reservation—venue. **Petition for writ of certiorari filed September 11, 1947. Certiorari denied, October 27, 1947. Petition for rehearing denied, November 17, 1947.**

* Data compiled from **CCH U. S. Supreme Court Docket, 1947-1948.**

# Regulations and Rulings

GENERAL—Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it has been authorized to do business or the dissolution of a domestic corporation, counsel have usually found that it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.

MASSACHUSETTS—A list of the more commonly held securities, dividends on which have either been entirely or partially exempt from taxation under the personal income tax law during recent years, has been prepared by the Commissioner of Corporations and Taxation. (State Tax Reporter, Massachusetts, page 1927 et seq.)

MISSISSIPPI—In connection with the allocation of the franchise tax base by taxpayers subject to the apportionment formula, the phrase "gross receipts" does not refer to gross sales alone but to all receipts from that which is actually done or carried on in the state. (Letter, Income Tax Division, State Tax Reporter, Mississippi, ¶ 15-006.)

NORTH CAROLINA—Foreign non-stock cooperatives may not be admitted into the state for domestication, as the state has not made any provision for such cooperatives. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, North Carolina, ¶ 2-211.)

A state may require an out-of-state concern which is engaged in business in this state, to collect the use tax on property sold for use, consumption or storage in the state, and such requirement imposes no burden nor does it discriminate against interstate commerce. This applies to a non-resident company making prefabricated structures which employs an agent in this state soliciting orders. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 60-150.)

OKLAHOMA—S. B. No. 42, Laws of 1947, amending the Ad Valorem Tax Code, and providing, among other things, that the assessment of real property be annual, rather than biennial, and that personal property lists be filed not later than March 15 of each year, should be treated as constitutional. (Opinion of the Attorney General to State Examiner and Inspector, State Tax Reporter, Oklahoma, ¶ 91-201.)

TEXAS—The proper basis for the computation of the Texas franchise tax paid by non par stock corporations is the value actually received by the corporation for shares of stock subscribed for and issued. (Opinion of the Attorney General to the State Auditor, State Tax Reporter, Texas, ¶ 15-003.)

# Some Important Matters for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

CONNECTICUT—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Franchise (Income) Tax due before January 1.—Domestic and Foreign Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

INDIANA—Annual Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due February 1.—Domestic Corporations.

MISSOURI—Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

OHIO—Retail Sales Tax Returns due on or before January 31.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Statement due January 31.—Foreign Corporations.

SOUTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

WEST VIRGINIA—Annual Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

# The Corporation Trust Company's Supplementary Literature

*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.*

**Suppose the Corporation's Charter Didn't Fit!** Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

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**When a Corporation Is P. W. O. L.** A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

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**Spot Stocks—and Interstate Commerce.** Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside state and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

**We've Always Got Along This Way.** A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

**Judgment by Default.** Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
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# THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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